

108TH CONGRESS
1ST SESSION

H. R. 3078

To amend the National Labor Relations Act to establish an efficient system to enable employees to form or become members of labor organizations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 2003

Mr. GEORGE MILLER of California (for himself, Mr. BISHOP of New York, Mr. GRIJALVA, Mr. PAYNE, Mr. KILDEE, Mr. OWENS, Mr. TIERNEY, Mr. ABERCROMBIE, Ms. SOLIS, Mr. KUCINICH, Mr. UDALL of New Mexico, Mrs. MCCARTHY of New York, Mr. RYAN of Ohio, Ms. CARSON of Indiana, Ms. SCHAKOWSKY, Ms. SLAUGHTER, Ms. DELAURO, Mr. SERRANO, Ms. MCCOLLUM, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the National Labor Relations Act to establish an efficient system to enable employees to form or become members of labor organizations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Employee Right to
5 Choose Act of 2003”.

1 **SEC. 2. STREAMLINING UNIONIZATION PROCESS.**

2 The National Labor Relations Act (29 U.S.C. 151
3 et seq.) is amended—

4 (1) in section 3(b), in the second sentence—

5 (A) by striking “and to” and inserting
6 “to”; and

7 (B) by striking “and certify the results
8 thereof,” and inserting “, and to make the cer-
9 tifications provided for in section 9,”;

10 (2) in section 8—

11 (A) in subsection (b)(7)(C), in the first
12 proviso—

13 (i) by striking “the provisions of sec-
14 tion 9(c)(1) or”; and

15 (ii) by striking “direct an election in
16 such unit as the Board finds to be appro-
17 priate and shall certify the results thereof”
18 and inserting “process the petition in ac-
19 cordance with section 9(c)(1)”; and

20 (B) by striking subsection (d) and insert-
21 ing the following:

22 “(d) **COLLECTIVE BARGAINING.**—

23 “(1) **IN GENERAL.**—For the purposes of this
24 section, to bargain collectively is the performance of
25 the mutual obligation of the employer and the rep-
26 resentative of the employees to meet at reasonable

1 times and confer in good faith with respect to wages,
2 hours, and other terms and conditions of employ-
3 ment, or the negotiation of an agreement, or any
4 question arising thereunder, and the execution of a
5 written contract incorporating any agreement
6 reached if requested by either party, but such obliga-
7 tion does not compel either party to agree to a pro-
8 posal or require the making of a concession: *Pro-*
9 *vided*, That where there is in effect a collective-bar-
10 gaining contract covering employees in an industry
11 affecting commerce, the duty to bargain collectively
12 shall also mean that no party to such contract shall
13 terminate or modify such contract, unless the party
14 desiring such termination or modification—

15 “(A) serves a written notice upon the other
16 party to the contract of the proposed termi-
17 nation or modification 60 days prior to the ex-
18 piration date thereof, or in the event such con-
19 tract contains no expiration date, 60 days prior
20 to the time it is proposed to make such termi-
21 nation or modification;

22 “(B) offers to meet and confer with the
23 other party for the purpose of negotiating a
24 new contract or a contract containing the pro-
25 posed modifications;

1 “(C) notifies the Federal Mediation and
2 Conciliation Service within 30 days after such
3 notice of the existence of a dispute, and simul-
4 taneously therewith notifies any State or Terri-
5 torial agency established to mediate and concil-
6 iate disputes within the State or Territory
7 where the dispute occurred, provided no agree-
8 ment has been reached by that time; and

9 “(D) continues in full force and effect,
10 without resorting to strike or lock-out, all the
11 terms and conditions of the existing contract
12 for a period of 60 days after such notice is
13 given or until the expiration date of such con-
14 tract, whichever occurs later:

15 The duties imposed upon employers, employees, and
16 labor organizations by subparagraphs (B), (C), and
17 (D) shall become inapplicable upon an intervening
18 certification of the Board, under which the labor or-
19 ganization or individual, which is a party to the con-
20 tract, has been superseded as or ceased to be the
21 representative of the employees subject to the provi-
22 sions of section 9(a), and the duties so imposed shall
23 not be construed as requiring either party to discuss
24 or agree to any modification of the terms and condi-
25 tions contained in a contract for a fixed period, if

1 such modification is to become effective before such
2 terms and conditions can be reopened under the pro-
3 visions of the contract. Any employee who engages
4 in a strike within any notice period specified in this
5 subsection, or who engages in any strike within the
6 appropriate period specified in subsection (g), shall
7 lose his status as an employee of the employer en-
8 gaged in the particular labor dispute, for the pur-
9 poses of sections 8, 9, and 10 of this Act, as amend-
10 ed, but such loss of status for such employee shall
11 terminate if and when he is reemployed by such em-
12 ployer.

13 “(2) BARGAINING FOR EMPLOYEES OF A
14 HEALTH CARE INSTITUTION.—Whenever the collec-
15 tive bargaining involves employees of a health care
16 institution, the provisions of this subsection shall be
17 modified as follows:

18 “(A) The notice of paragraph (1)(A) shall
19 be 90 days; the notice of paragraph (1)(C) shall
20 be 60 days; and the contract period of para-
21 graph (1)(D) shall be 90 days.

22 “(B) Where the bargaining is for an initial
23 agreement following certification or recognition,
24 at least 30 days’ notice of the existence of a

1 dispute shall be given by the labor organization
2 to the agencies set forth in paragraph (1)(C).

3 “(C) After notice is given to the Federal
4 Mediation and Conciliation Service under either
5 clause (A) or (B) of this sentence, the Service
6 shall promptly communicate with the parties
7 and use its best efforts, by mediation and con-
8 ciliation, to bring them to agreement. The par-
9 ties shall participate fully and promptly in such
10 meetings as may be undertaken by the Service
11 for the purpose of aiding in a settlement of the
12 dispute.

13 “(3) BARGAINING FOR AN INITIAL AGREE-
14 MENT.—Whenever the collective bargaining is for an
15 initial agreement following certification or recogni-
16 tion, the provisions of this subsection shall be modi-
17 fied as follows:

18 “(A) Not later than 10 days after receiving
19 a written request for collective bargaining from
20 an individual or labor organization that has
21 been newly recognized or certified as a rep-
22 resentative, as described in section 9(a), or
23 within such further period as the parties agree
24 upon, the parties shall meet and commence to
25 bargain collectively and shall make every rea-

sonable effort to conclude and sign a collective bargaining agreement.

“(B) If after 180 days from the commencement of bargaining, or such further period as the parties agree upon, the parties have failed to reach an agreement, either party may notify the Federal Mediation and Conciliation Service of the existence of a dispute and request mediation. Whenever such a request is received, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring the parties to agreement.

“(C) If after 30 days from the request for mediation, or such further period as the parties agree upon, the Service is not able to bring the parties to agreement by conciliation, the Service shall refer the dispute to an arbitration board established in accordance with such regulations as may be prescribed by the Service. The arbitration panel shall render a decision settling the dispute and such decision shall be binding upon the parties for a period of 2 years, unless

1 amended during such period by written consent
2 of the parties.”; and

3 (3) in section 9—

4 (A) by striking subsection (c) and inserting
5 the following:

6 “(c) HEARINGS ON QUESTIONS AFFECTING COM-
7 MERCE; RULES AND REGULATIONS.—

8 “(1) IN GENERAL.—Whenever a petition shall
9 have been filed, in accordance with such regulations
10 as may be prescribed by the Board—

11 “(A) by an employee or group of employees
12 or any individual or labor organization acting in
13 their behalf alleging that a substantial number
14 of employees wish to be represented for collec-
15 tive bargaining and that their employer declines
16 to recognize their representative as the rep-
17 resentative described in subsection (a); or

18 “(B) by an employer, alleging that an indi-
19 vidual or labor organization has presented to
20 the employer a claim to be recognized as the
21 representative described in subsection (a),

22 the Board shall investigate such petition and if the
23 Board has reasonable cause to believe that a ques-
24 tion of representation affecting commerce exists,
25 shall provide for an appropriate hearing upon due

1 notice. Such hearing may be conducted by an officer
2 or employee of the regional office, who shall not
3 make any recommendations with respect thereto. If
4 the Board finds upon the record of such hearing
5 that such a question of representation exists, the
6 Board shall direct an election by secret ballot and
7 shall certify the results thereof: *Provided*, That if the
8 Board finds that, as of the date of the filing of the
9 petition or such other date as the Board considers
10 appropriate, a majority of the employees in a unit
11 appropriate for collective bargaining have signed au-
12 thorizations designating the individual or labor orga-
13 nization specified in the petition as their bargaining
14 representative, and there is no other individual or
15 labor organization that has been so designated by 30
16 percent or more of the employees, the Board shall
17 not direct an election but shall certify the individual
18 or labor organization as the representative described
19 in subsection (a).

20 “(2) INDIVIDUAL OR LABOR ORGANIZATION NO
21 LONGER REPRESENTATIVE.—Whenever a petition
22 shall have been filed, in accordance with such regu-
23 lations as may be prescribed by the Board by an em-
24 ployee or group of employees or any individual or
25 labor organization acting in their behalf alleging

1 that a substantial number of employees assert that
2 the individual or labor organization, which has been
3 certified or is being currently recognized by their
4 employer as the bargaining representative, is no
5 longer a representative as described in subsection
6 (a), the Board shall investigate such petition and if
7 the Board has reasonable cause to believe that a
8 question of representation affecting commerce exists
9 shall provide for an appropriate hearing upon due
10 notice. Such hearing may be conducted by an officer
11 or employee of the regional office, who shall not
12 make any recommendations with respect thereto. If
13 the Board finds upon the record of such hearing
14 that such a question of representation exists, it shall
15 direct an election by secret ballot and shall certify
16 the results thereof.

17 “(3) REGULATIONS AND RULES OF DECISION.—
18 In determining whether or not a question of rep-
19 resentation affecting commerce exists, the same reg-
20 ulations and rules of decision shall apply irrespective
21 of the identity of the persons filing the petition or
22 the kind of relief sought and in no case shall the
23 Board deny a labor organization a place on the bal-
24 lot by reason of an order with respect to such labor

1 organization or its predecessor not issued in con-
2 formity with section 10(c).

3 “(4) LIMITATION ON ELECTION.—No election
4 shall be directed in any bargaining unit or any sub-
5 division within which, in the preceding 12-month pe-
6 riod, a valid election shall have been held, and no
7 bargaining representative shall be certified on the
8 basis of a showing of majority support obtained
9 within the 12-month period following such an elec-
10 tion. Employees engaged in an economic strike who
11 are not entitled to reinstatement shall be eligible to
12 vote under such regulations as the Board shall find
13 are consistent with the purposes and provisions of
14 this subchapter in any election conducted within 12
15 months after the commencement of the strike. In
16 any election where none of the choices on the ballot
17 receives a majority, a run-off shall be conducted, the
18 ballot providing for a selection between the 2 choices
19 receiving the largest and second largest number of
20 valid votes cast in the election.

21 “(5) RULE OF CONSTRUCTION.—Nothing in
22 this section shall be construed to prohibit the
23 waiving of hearings by stipulation for the purpose of
24 a consent election in conformity with regulations and
25 rules of decision of the Board.

1 “(6) DETERMINATION OF APPROPRIATE
2 UNIT.—In determining whether a unit is appropriate
3 for the purposes specified in subsection (b), the ex-
4 tent to which the employees have organized shall not
5 be controlling.

6 “(7) GUIDELINES AND PROCEDURES.—The
7 Board shall develop guidelines and procedures for
8 the designation by employees of a bargaining rep-
9 resentative as described in subsection (a). Such
10 guidelines and procedures shall include—

11 “(A) model collective bargaining authoriza-
12 tion language that may be used for purposes of
13 making the designations described in paragraph
14 (1); and

15 “(B) procedures to be used by the Board
16 to establish the authenticity of signed author-
17 izations designating bargaining representa-
18 tives.”; and

19 (B) by striking subsection (e).

20 **SEC. 3. CONFORMING AMENDMENTS.**

21 Section 8 of the National Labor Relations Act (29
22 U.S.C. 158) is amended—

23 (1) in subsection (a)(3)(ii), by striking “section
24 9(e)” and inserting “section 9(c)(1)”; and

- 1 (2) in subsection (f), by striking “9(e)” and in-
2 serting “9(c)(1)”.

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